

A sale of building materials to be incorporated into real estate in an enterprise zone that otherwise meets the requirements of the exemption does not lose exemption status because the purchaser is the contractor of a lessee of the real estate. See 86 Ill. Adm. Code 130.1951 and 35 ILCS 120/5k. (This is a GIL.)

September 1, 2006

Dear Xxxxx:

This letter is in response to your e-mail inquiry dated April 4, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Attached is a copy of the regulation pertaining to the ROT/Enterprise Zone. I could not find anything on point related to the following question pertaining to the enterprise zone building materials sales tax deduction.

It is my understanding that when the enterprise zone administrator issues a Certificate of Eligibility for Sales Tax Exemption to the building owner, such owner can then make copies of it and distribute it to the contractors who may use it as purchasers of qualified building materials for the project located within the enterprise zone. If the entity who has obtained such a Certificate is the lessor of the building, it would seem reasonable that the lessor could distribute copies of it to the lessee who may then distribute it to the contractors who may use it as purchasers of qualified building materials for the project located within the enterprise zone. Absent any restrictions at the local ordinance level and assuming the purchaser's statement is properly executed, etc., would there be any state issue simply because it is the lessee who is hiring the contractor and conveying a copy of the Certificate to the contractor?

Please advise.

Thank you.

DEPARTMENT'S RESPONSE:

When a qualified sale of building materials to be incorporated into real estate in an enterprise zone established by a county or municipality under the Illinois Enterprise Zone Act (20 ILCS 655/Act) by remodeling, rehabilitation, or new construction is made, the materials may be purchased tax-free. Section 5k of the Retailers' Occupation Tax Act (35 ILCS 120/5k) defines "qualified sale" as a "sale of building materials that will be incorporated into real estate as part of a building project for which a Certificate of Eligibility for Sales Tax Exemption has been issued by the administrator of the enterprise zone in which the building project is located."

The Department of Revenue's administrative rules contain guidelines for what is required to meet this exemption. See 86 Il. Adm. Code 130.1951(d), (e), and (f). Subsection (d)(4) states:

- 4) Certification. A retailer claiming the deduction on and after August 6, 2002 must have among its books and records:
 - A) a copy of the Certificate of Eligibility for Sales Tax Exemption from the administrator of the enterprise zone into which the materials will be incorporated; and
 - B) a certification from the purchaser of the building materials containing the following:
 - i) a statement that the building materials being purchased are being purchased for incorporation into real estate located in an Illinois enterprise zone,
 - ii) the location or address of that real estate,
 - iii) the name of the enterprise zone in which that real estate is located,
 - iv) a description of the building materials being purchased for incorporation into that real estate,
 - v) the date of the purchase, and
 - vi) the purchaser's signature.

Neither this provision nor any other provision of the statute or administrative rules restricts who may purchase the materials, provided that the purchaser certifies to the proper use of the materials and all other elements of the exemption are met. As a result, a lessee may make qualified purchases under the exemption for building materials that will be incorporated into real estate in an enterprise zone.

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Sincerely,

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SJM:msk